

MICHIGAN'S PUBLIC DEFENSE SYSTEM REPORT CARD

***“In all criminal
prosecutions, the accused
shall enjoy the right...
to have the assistance of
counsel for his defense.”***

U.S. Constitution, Amendment VI

The Michigan Public Defense System Report Card is based on the Eleven Principles of a Public Defense Delivery System, adopted by the State Bar of Michigan's Representative Assembly in 2002, and the findings of a comprehensive study of Michigan's public defense system completed by the National Legal Aid and Defender Association, released in June 2008.

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The American Bar Association and the State Bar of Michigan adopted the Ten and Eleven Principles of a Public Defense Delivery System in 2002. In a comprehensive Michigan study commissioned by the State Legislature, a team of national experts found that our state fails to meet nationally recognized standards.

1. INDEPENDENCE

The public defense function, including the selection, funding, and payment of defense counsel, is independent.

F *Comments: In many Michigan counties, judges have the complete discretion to award contracts or appoint defense attorneys to cases. This practice leads to a compromised justice system in which attorneys may be forced to make critical decisions based not on the best interest of their clients but on pleasing the judge. Attorneys in some counties "must do something to garner sufficient favor or grace with a judge to get an appointment."¹*

2. STATE FUNDING AND STRUCTURAL INTEGRITY

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

F *Comments: An efficient and effective public defense system requires adequate state funding and state oversight to meet even minimum national standards. Michigan is one of only seven states that provides no state funding for trial-level public defense services. Michigan's 83 counties and municipalities are ill-equipped to fund and manage statewide public defense services. In addition, a 'mixed system' of a defender office and an appointed counsel system provides the most effective and stable system over time.*

3. ELIGIBILITY/EARLY APPOINTMENT

Clients are screened for eligibility and defense counsel is assigned and notified of appointment as soon as feasible after clients' arrest, detention, or request for counsel.

D *Comments: Michigan has no uniform screening method to determine eligibility for public defense services, nor does it have eligibility standards that are uniformly applied statewide.*

Many Michigan counties have no eligibility screening mechanism. Other jurisdictions require individuals to fill out forms to be reviewed by judges, court administrators, or other court personnel, based on local standards. In some courts, defendants routinely waive their right to an attorney because they are told by the courts that they will be responsible for the cost, without regard for eligibility.

There is no statewide requirement for or enforcement of prompt appointment of counsel. In some jurisdictions, defendants are not represented at initial arraignment or told to speak with the prosecuting attorney before the court appoints an attorney.

4. CONFIDENTIALITY

Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

D *Comments: The majority of the ten counties studied by the NLADA fail to uphold this principle. Many attorneys interview their clients in crowded "bullpens" that are located behind courtrooms or in public hallways. In one county's district court, attorneys wait in line to have an opportunity to meet with their clients in a unisex bathroom. A few counties do have private meeting spaces in which defense attorneys can meet with their clients.*

¹ National Legal Aid and Defender Association "A Race to the Bottom: Speed & Savings over Due Process – A Constitutional Crisis"

5. AVAILABILITY

Defense counsel's workload is controlled to permit the rendering of quality representation.

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Comments: There is no court in Michigan that has a total caseload or workload cap for public defense attorneys. Across the state, attorneys have caseloads well above the national standards. In one county, a misdemeanor contract firm handles so many cases that the attorneys spend an average of 32 minutes per case. Many private attorneys maintain private law practices and courts have no way of tracking the number of cases they are handling, let alone the number of court appointments attorneys may be taking in other counties or the number of privately retained clients.

6. COMPETENCY

Defense counsel's ability, training, and experience match the complexity of the case.

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Comments: There are no consistent statewide qualification standards for public defense attorneys. Some counties have boards that review applications submitted by attorneys who wish to take court appointments, but others have no minimum qualifications for some types of cases. Although some courts do have standards, they are very limited and are not appropriate measures of experience or ability.

7. CONSISTENCY

The same attorney continuously represents the client until completion of the case.

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Comments: This type of consistency, called "vertical representation," is easier to maintain with smaller pools of attorneys and some jurisdictions do uphold this principle. However, attorneys in some urban counties are overburdened with cases and forced by the system to ask "stand-in" attorneys to cover for them for hearings. Some courts appoint one attorney to handle all the arraignments in a day and then appoint a different attorney to handle the case through disposition.

8. RESOURCES

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

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Comments: The public defense system is underfunded and attorneys have extremely limited access to experts and investigators. Public defenders often must ask the presiding judge for funds to hire expert witnesses or investigators. If funds are authorized but insufficient, the defense may proceed without crucial testimony. In one county, public defense attorneys are required to provide certain district court services (arraignment attorney, staffing the drug court, and appearing at lineups) without compensation.

9. TRAINING

Defense counsel is provided with and required to attend continuing legal education.

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Comments: Although some courts require attorneys to attend some training, there are no minimum statewide training requirements for attorneys. The majority of courts have no training requirements, and specialized training for representation of juveniles in delinquency proceedings is extremely rare.

10. QUALITY

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

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Comments: There are no statewide performance standards or oversight mechanisms, leading to wide variations in the quality of justice. In some courts, judges evaluate attorney performance in a non-systematic way, while others have a more formalized review process that may include a committee. Most courts in Michigan have no real review process at all. Some small public defender offices have no real supervision or file review.

11. ADVOCACY

When there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism.

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Comments: Because Michigan lacks the structure to uphold the first ten principles, it does not have the ability to implement the 11th Principle. Defense attorneys in an ineffective system do not have the time or resources to identify more cost-effective approaches to substance abuse, mental illness, and developmental delays, in appropriate cases.



The Campaign for Justice is a broad-based group of organizations and individuals from across the political spectrum fighting for a fair and effective public defense system in Michigan. We believe that legislative reform is needed to improve cost effectiveness, protect the public's safety and restore the Constitutional right to an effective defense representation.

THE COALITION:

CRIMINAL JUSTICE SYSTEM/ATTORNEYS

- ▶ Legal Services in Michigan – State Planning Body
- ▶ Criminal Defense Attorneys of Michigan
- ▶ National Association of Criminal Defense Lawyers
- ▶ Criminal Defense Lawyers of Washtenaw County
- ▶ Hispanic Bar Association of Michigan
- ▶ Grand Rapids Bar Association
- ▶ Kalamazoo County Bar Association
- ▶ Macomb County Bar Association
- ▶ Saginaw County Bar Association
- ▶ Shiawassee County Bar Association
- ▶ National Lawyers Guild – Detroit & Michigan Chapter
- ▶ National Conference of Black Lawyers – Detroit Chapter
- ▶ Legal Aid and Defender Association, Inc.
- ▶ Washtenaw County Office of Public Defender
- ▶ Washtenaw County Criminal Justice Collaborative Council

CIVIL RIGHTS/SOCIAL JUSTICE

- ▶ Michigan Civil Rights Commission
- ▶ American Civil Liberties Union
- ▶ ACLU of Michigan
- ▶ NAACP - Michigan State Conference
- ▶ Constitution Project
- ▶ Michigan Protection and Advocacy Service, Inc.
- ▶ Brennan Center for Justice at New York University School of Law
- ▶ American-Arab Anti-Discrimination Committee of Michigan
- ▶ Race Relations Council of Southwest Michigan
- ▶ Sugar Law Center for Economic and Social Justice
- ▶ El Centro Obrero de Detroit

CRIMINAL JUSTICE ADVOCATES

- ▶ Michigan Innocence Clinic
- ▶ Innocence Project – Cooley Law School
- ▶ Michigan Council on Crime and Delinquency
- ▶ Michigan Public Defense Task Force
- ▶ American Friends Service Committee Criminal Justice Program
- ▶ Citizens Alliance on Prisons and Public Spending - Michigan
- ▶ Humanity for Prisoners
- ▶ MOIST
- ▶ Hope 4 Healing Hearts
- ▶ Michigan Women's Justice & Clemency Project

FAITH

- ▶ Citizens for Traditional Values
- ▶ Michigan Catholic Conference
- ▶ Prison Fellowship
- ▶ Micah Center
- ▶ Crossroad Bible Institute
- ▶ Michigan Jewish Conference
- ▶ Michigan Board of Rabbis
- ▶ Jewish Community Relations Council of Metropolitan Detroit
- ▶ Council of Islamic Organizations of Michigan
- ▶ Metropolitan Organizing Strategy Enabling Strength (MOSES)
- ▶ Michigan Unitarian Universalist Social Justice Network
- ▶ National Council of Jewish Women, Greater Detroit Section
- ▶ Troy Interfaith Group
- ▶ Interfaith Council for Peace and Justice
- ▶ Brad Snively, executive director, Michigan Family Forum
- ▶ Temple Kol Ami Social Action Committee

PROFESSIONAL/SOCIAL SERVICE PROVIDERS

- ▶ Michigan Council of Private Investigators
- ▶ National Association of Legal Investigators
- ▶ Association for Children's Mental Health
- ▶ Lansing Association of Black Social Workers
- ▶ JARC
- ▶ National Association of Social Workers – Michigan
- ▶ Michigan League for Human Services
- ▶ Michigan County Social Services Association
- ▶ Michigan Association for Children with Emotional Disorders
- ▶ The Provider Alliance
- ▶ Detroit Life Challenge
- ▶ Detroit Hispanic Development Corporation
- ▶ Mental Health Association in Michigan
- ▶ Partners in Crisis

PUBLIC POLICY

- ▶ Michigan Prospect
- ▶ League of Women Voters
- ▶ American Association of University Women of Michigan
- ▶ Eastern Michigan University Student Body – 97th Student Senate
- ▶ Former Michigan Gov. William Milliken

CHILDREN'S GROUPS/JUVENILE JUSTICE

- ▶ Michigan Juvenile Justice Collaborative
- ▶ Michigan Juvenile Detention Association
- ▶ Michigan Federation for Children and Families
- ▶ The Young People's Project, Inc.-Michigan

The Campaign for Justice also works in close partnership with the State Bar of Michigan and the Governor's Office of Faith Based and Neighborhood Partnerships. In addition, the Michigan Women's Commission supports the concept of public defense reform.

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